IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9236 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURAJI MAHADEVBHAI RAJPUT

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR KT DAVE, ASSISTANT GOVERNMENT PLEADER for Respondent No.1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Banaskantha at Palanpur passed an order on September 2, 1999 in exercise of powers under Section 3(1) of the PASA Act detaining

Bhuraji Mahadevbhai Rajput under the provisions of the said Act.

2. The detaining authority took into consideration 3 offences registered against the detenue under Bombay Prohibition Act. The authority also considered statements of 4 witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority observed that the detenue's acitivities are that of a bootlegger and that he is required to be immediately prevented from pursuing his activities which are detrimental to public order.

3. The detenue/petitioner challenges the order of detention on various counts. However, Mr. Gondalia, learned advocate appearing for the learned advocate Mr. Lakhani for the petitioner has restricted his arguments on the ground of improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the detaining authority has not verified the statements of the anonymous witnesses at all and therefore in the absence of a subjective satisfaction about correctness and genuineness of the fear expressed by the witnesses qua the detenue and in the absence of a subjective satisfaction for the need for exercise of powers in public interest, the powers cannot be said to have been properly exercised. This resulted into infringement of the right of the detenue of making an effective representation. The petition may, therefore, be allowed.

4. Mr. K.T. Dave has opposed this petition. He submitted that the statements have been verified by a senior officer of the rank of Dy.SP on the basis of which the detaining authority has exercised the powers and the petition, therefore, may not be entertained.

5. Considering rival side contentions and on perusal of papers, it is clear that the detaining authority has not verified the statements of the witnesses in respect of whom privilege under Section 9(2) of the PASA Act is claimed. The grounds of detention also indicates that the detaining authority has not recorded its satisfaction about the correctness and genuineness of the fear expressed by the witnesses qua the detenue and the need for exercise of these powers in public interest therefor.

This being so, the detaining authority cannot be said to have exercised the powers of claiming privilege properly.

6. Improper exercise of powers under Section 9(2) of the PASA Act results into infringement of right of the detenue of making an effective representation envisaged under Article 22(5) of the Constitution of India.

7. In view of the above discussions, the subjective satisfaction by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act having not been recorded by the Detaining authority, the exercise of powers under Section 9(2) of PASA Act cannot be considered as genuine or proper. The detention order and consequently the detention, therefore, would be vitiated. The petition deserves to be allowed.

8. The petition is allowed for the foregoing reasons. The petitioner/detenue Bhuraji Mahadevbhai Rajput be set at liberty forthwith from the detention, if not required in any other case. Rule made absolute. No costs.

(A.L. Dave, J.)

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